

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FOAM SUPPLIES, INC.,

Plaintiff,

v.

THE DOW CHEMICAL COMPANY,

Defendant.

No. 4 05CV01772CDP

EXHIBIT B

**TO MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

2003 - 2004 Contract

Glenn Davis
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DATED: November 30, 2005



The Dow Chemical Company ("Dow" or "we"), Midland, Michigan 48674 agrees to sell to Customer (or "you") and Customer agrees to buy from DOW the products shown in the information box in accordance with the provisions of this Contract.

Information for this contract

Customer Name Foam Supplies, Inc
Customer Address 4387 N. Rider Trail, Earth City, MO 63045
Contract Period: Effective Date ... January 1, 2002 Termination Date ... December 31, 2003
Product(s) See Addendum A
Quantity Obligations
Customer Commits to Buy Requirements estimated to be 5MM lbs/year PMDI & 2 MM lbs/year Polyol
Dow Commits to Sell Requirements estimated to be 5 MM lbs/year PMDI & 2 MM lbs/year Polyol
Price See Addendum A
Transportation Terms Dow Asborbs freight- 40M lbs minimum
Shipping Terms
F.O.B. Dow's Facility At La Porte, TX & Freeport, TX
To Customer's Facility At Earth City, MO, Lewisville, TX and other mutually agreed locations
Payment Terms: Net 30 Days from shipment date 2% 40 days, net 41 days on PMDI
On polyol
Other

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Dow's Commitments To The Customer**1. Dow assures you that:**

- a. the Products when shipped will meet Dow's Quality Specifications for the Products.
- b. the Products will be fit for the ordinary uses identified in Dow's current product literature.
- c. we will give you prior notice if Dow's Quality Specifications are changed.
- d. we will supply you with current material safety data sheets (MSDS).
- e. we will have appropriate assistance available in keeping with our Product Stewardship and Distribution Emergency Response programs.

This contract is continued on the back. Please read it before signing.

Customer: FOAM SUPPLIES, INC.

By: [Signature]

Title: VP

Date: 1-07-02

The Dow Chemical Company

By: [Signature]

Title: Richard L. Beitel

Commercial Director, Polyurethanes

Date: January 4, 2002

NOTE: Dow can revoke this offer to contract any time before we receive Customer's acceptance. The offer also expires if Dow doesn't receive a signed acceptance within 30 days of the date Dow executed this offer.

ORIGINAL

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Terms and Conditions (continued)

CUSTOMER'S COMMITMENTS TO DOW

2. Customer will pay for the Product on the agreed terms. Customer will also pay all taxes and duties that are now or in the future may be imposed, increased or levied on Dow in connection with the manufacture, sale, transportation or disposal of the Products or raw materials used in them (except income taxes). If payments are not made on time or Dow has reason to believe you have unsatisfactory financial responsibility, Dow may defer shipments, accelerate the due date on all amounts you owe Dow, require cash payments or other security, or cancel this Contract. You agree to pay all of Dow's collection costs (including reasonable attorney fees).

3. Customer has responsibilities for the safe use, selection, handling, and disposal of the Products. You will (a) familiarize yourself with any product information Dow provides at any time (b) follow safe handling, use, selling, storage, transportation, and disposal practices and instruct your employees, contractors, agents, and customers in these practices and (c) take action to avoid spills or other dangers to persons, property or the environment. Dow may cancel this Contract on 15 days' notice if Customer breaches this provision. Customer will indemnify Dow for all claims arising out of Customer's breach of this provision.

4. Customer will inform Dow in writing of any claim which you or any third party has within 60 days after you learn of a claim.

SHIPMENTS

5. Contract quantities are based on Customer taking deliveries in approximately equal monthly installments. Dow is only obligated to sell in any one month 1/12 of its maximum annual volume obligation unless seasonal requirements are noted in this Contract. Customer will unload and return all transportation equipment to carrier within the tariff or contract period free of detention charges. Dow may collect its standard detention charge for its equipment if held beyond Dow's allowable time. On 30 days' notice, quantities under requirements contract may be limited to the average of Customer's monthly purchases for the 3-month period before the notice.

PRICE CHANGES AND TEMPORARY VOLUNTARY ALLOWANCES

6. Dow may increase prices or change transportation terms by giving Customer at least 90 days prior notice, which is extended to meet competitive terms. These changes will be considered to be accepted unless Customer objects before the effective date. If there is an objection, Dow will within 15 days advise whether (a) Dow will continue to sell on the previous terms or (b) Dow wants to negotiate the changes with you. During any negotiations, price and other terms shall be those which Dow implemented by the notice. If negotiations are not finalized within 30 days after the effective date of the change, either of us can terminate the negotiations and terminate this Contract. For competitive reasons, Dow may sometimes institute or change temporary voluntary allowances (TVAs). TVAs can be changed by Dow at any time and without prior notice. From the date Dow notifies you of a price increase or a full or partial withdrawal of a TVA until the effective date of the change, Customer may only purchase at the same rate as you did before notice of the change was given.

COMPETITIVE OFFERS

7. Customer can ask Dow to meet competitive offers. Here's how. Send Dow evidence that you have received a firm commitment from a producer that is not affiliated with you to sell like quality goods for money (not other goods or services) all of the remaining quantity of any

Product to be sold under this Contract for a lower delivered price and tell Dow you intend to accept this offer. Within 30 days, Dow will advise you either (a) that the offer will be met or (b) that the Contract with respect to that product is terminated.

FORCE MAJEURE AND GOVERNMENTAL CONTROLS

8. Force majeure occurs when there is any contingency beyond the reasonable control of Dow or Customer (for example, accident, public protest, breakage of equipment, governmental actions or laws, or labor difficulties) which interferes with Dow's or Customer's production, supply, transportation or consumption practice or when Dow is unable to obtain raw materials or energy on terms considered practicable by Dow. Quantities of Products affected by force majeure shall be eliminated from this Contract without liability. During force majeure, Dow will allocate its supplies of raw materials and Products among their various uses in any manner which is fair and reasonable. Dow won't be under any obligation to obtain raw materials or Products from other sources if there are shortfalls or to allocate raw materials or Products obtained by Dow from third parties for Dow's internal use. If a governmental action substantially affects Dow's right to set prices or transportation terms, Dow may terminate this Contract on 30 days' notice. Alternatively, Dow may postpone the effective date of a price increase but this won't affect Dow's rights to terminate this Contract later if the government action persists.

EXCLUSION OF ALL OTHER WARRANTIES AND LIMITATION OF LIABILITIES

9. The commitments in Section 1 are Dow's sole warranties respecting the Products and are made expressly in lieu of and exclude any implied warranties of merchantability and fitness for a particular purpose and all other express or implied representations and warranties.

10. Dow shall not be liable to pay consequential, punitive, exemplary or incidental damages to Customer for any claims related to or arising out of the performance or nonperformance of this Contract. Dow's total liability for claims is limited, at Customer's option, to replacement or repayment of the purchase price paid for the goods which are the subject of the claim.

11. Sections 3, 4 and 10 shall survive the termination or expiration of this Contract.

OTHER PROVISIONS

12. We will defend you and pay any awards against Customer in a suit that alleges that the manufacture or sale of any Product which is a staple commodity of commerce infringes a U.S. patent if you give Dow prompt notice and make your employees and pertinent records available for the defense.

13. The rights or duties under this Contract may not be assigned or transferred without consent.

14. This document, together with its attachments, constitutes the complete and exclusive agreement between Customer and Dow. Any additional or different terms included in subsequent purchase orders, acknowledgments, or other documents provided by either party shall not be binding. This document may be modified by an amendment, expressly stated as such, signed by both parties.

15. This Contract will be governed by Michigan Law.

Addendum A
Dow Sales Contract 24131

PRICING

<u>PRODUCT</u>	<u>PRICE</u>
PAPI* 27	\$0.67/lb
PAPI 580	\$0.70/lb
PAPI 94	\$0.71/lb
ISONATE* 50 OP	\$0.95/lb
VORANOL* 280	\$0.74/lb
VORANOL 360	\$0.61/lb

Trucks of PAPI 27 to Earth City location shall be \$.01/lb more, unless shipped for convenience of Dow

REBATES

The following rebates apply to purchases of all Dow products during each calendar year of the contract. The rebates shall be in free material of 45M pounds minimum for tank trucks and issued when the required volume is purchased each year.

<u>Year</u>	<u>Required Volume</u>	<u>Rebate</u>
2002	5.215 1-28-02 7 MM pounds	2 (two) free tank trucks of PAPI 27
2003	6.215 1-28-02 8 MM pounds	2 (two) free tank trucks of PAPI 27

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